

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

LVN CORPORATION,

Plaintiff,

v.

DENISE SUBRAMANIAM,

Defendant.

CASE NO. 3:14-cv-01836 RJB

ORDER ON RULE 60 MOTION

This matter comes before the Court on the Defendant's "Rule 60 Motion Relief from Judgment or Order Order is Void 60 (b)(4) Fraud upon the Court 60 (b)(3) New Evidence 60 (b)(2)." Dkt. 134. The Court has considered the pleadings filed regarding the motion and the remainder of the file.

**FACTS**

This judicial foreclosure case was filed in November of 2014. Dkt. 1. On October 16, 2015, summary judgment was granted in Plaintiff's favor and a judgment was entered against

1 Defendant on November 4, 2015. Dkts. 111 and 116. Defendant appealed the decision to the  
2 Ninth Circuit Court of Appeals. Dkt. 119.

3 On October 6, 2017, the Ninth Circuit Court of Appeals issued a Memorandum Opinion,  
4 affirming the district court's decision and judgment in Plaintiff's favor. *LNV Corporation v.*  
5 *Subramaniam*, Ninth Circuit Court of Appeals case number 15-35963, Dkt. 78. The mandate has  
6 not issued.

7 On October 19, 2017, Defendant filed the instant motion in this case. Dkt. 134.  
8 Defendant moves the Court for an order vacating the October 16, 2015 order granting Plaintiff's  
9 motion summary judgment (Dkt. 111) and the November 4, 2015 judgment (Dkt. 116), both of  
10 which were the subject of the appeal. *Id.*

11 Defendant moved for, and on October 26, 2017, the Ninth Circuit Court of Appeals  
12 granted, an extension of 14 days, from the date of the order, for Defendant to file a petition for a  
13 rehearing. *LNV Corporation v. Subramaniam*, Ninth Circuit Court of Appeals case number 15-  
14 35963, Dkt. 81.

15 This case was assigned to the undersigned on October 26, 2017. Dkt. 136.

### 16 **DISCUSSION**

17 Once a notice of appeal is filed from a final judgment, the district court is divested of  
18 jurisdiction. *Laurino v. Syringa General Hosp.*, 279 F.3d 750, 755 (9<sup>th</sup> Cir. 2002); *Griggs v.*  
19 *Provident Consumer Disc. Co.*, 459 U.S. 56, 58- 59 (1982). Under Fed. R. Civ. P. 62.1 (a)(2),  
20 "if a timely motion is made for relief that the court lacks authority to grant because of an appeal  
21 that has been docketed and is pending, the court may . . . deny the motion."  
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1 Defendant's motion (Dkt. 134) should be denied without prejudice. This case is on  
2 appeal with the Ninth Circuit. No mandate has issued. This Court is divested of jurisdiction to  
3 consider the motion.

4 **ORDER**

5 It is **ORDERED** that:

- 6 • Defendant's "Rule 60 Motion Relief from Judgment or Order Order is Void 60 (b)(4)  
7 Fraud upon the Court 60 (b)(3) New Evidence 60 (b)(2)" (Dkt. 134) **IS DENIED**  
8 **WITHOUT PREJUDICE.**

9 The Clerk is directed to send uncertified copies of this Order to all counsel of record and  
10 to any party appearing pro se at said party's last known address.

11 Dated this 31<sup>st</sup> day of October, 2017.

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14 ROBERT J. BRYAN  
United States District Judge  
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